

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.430/2000

Thursday, this the 29th day of November, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. P.Karunakaran,
S/o P.Velu,
'Sangama',
Society Road,
Maradu Panchayat,
PIN-682 304.
2. K.K.Unni;
S/o K.P.Poovara,
'Sree Sailam',
P.J.Antony Road,
Pachalam,
Kochi-682 012.
3. K.Venkatachalam,
S/o P.S.Krishna Ayyar,
Mavoomkuttathil,
House No.49/522,
Near Bhavan's Vidya Mandir,
Elamakkara.P.O.
Kochi-26.
4. M.Sankara Narayana Menon,
S/o late N.V.Unnikanna Menon,
'Pratheeksha', 44/838,
LFC Road, Kaloor,
Cochin-17.
5. Sebastian Daniel,
S/o V.L.Daniel,
House No.X/1389,
Amaravathi,
Fort Kochi-682 001.

- Applicants

By Advocate Mr VR Ramachandran Nair

Vs

1. Union of India represented by
the Secretary,
Ministry of Railways,
New Delhi.

2. The General Manager,
Southern Railway,
Chennai.
3. The Chairman,
Railway Board,
New Delhi.
4. The Manager,
Canara Bank,
Ernakulam South,
Cochin-16.
5. The Senior Postmaster,
Cochin-1.
6. The Divisional Personnel Officer,
Southern Railway,
Palakkad.
7. The Divisional Personnel Officer,
Southern Railway,
Trivandrum.
8. The Divisional Railway Medical Officer,
Southern Railway,
Ernakulam.

- Respondents

By Advocate Mrs Sumathi Dandapani (for R.1 to 3 & 6 to 8)

By Advocate Mr C Rajendran, SCGSC (for R-5)

The application having been heard on 12.9.2001 the Tribunal on 29.11.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, 5 in number, are retired Railway employees residing beyond 6 to 12 KMs from Ernakulam Junction Railway Station of Southern Railway. Being pensioners drawing pension from the Consolidated Fund of India, the applicants claim to be eligible for medical allowance to pensioners as per Para 140.18 of the Vth Pay Commission's recommendations accepted and acted upon by the Government of India as per A-1 and A-2. Now, the applicants are aggrieved by A-3 order dated 21.4.99 issued by the Ministry of Railways in purported

pursuance of A-1 and A-2 by granting "fixed medical allowance" of Rs.100/- per month to Railway pensioners/family pensioners residing outside the City/Town/Municipality limits of places where a Railway hospital/Health Unit/Lock up dispensary is situated subject to fulfilment of the conditions laid down therein. The applicants seek the following reliefs:

- i) To call for the records leading upto Annexure A-3 and quash the same to the extent it discriminates and disentitles the applicants from the other Central Government pensioners in the matter of eligibility for getting the medical allowance as per Annexures A1 and A2 orders.
- ii) To issue a direction to the respondents to pay the applicants, medical allowances at the rate of RS.100/- per month to all the applicants with effect from the date from which such payments have been granted to all other Central Government pensioners.

2. The main contention of the applicants is that they are residing in places which are not served by any C.G.H.S. medical facility. There was no justification for treating them differently from other Central Government pensioners although the Railways could issue order regarding fixed monthly medical allowance in consonance with A-1 and A-2. According to the applicants, by A-3 order the Railways have, without authority, enlarged the scope of inadmissibility of medical allowance by denying the same to all the pensioners

2

residing anywhere within the jurisdiction of the City/Town/Municipality etc. Though there is a health unit run by the Railways at Ernakulam, the applicants reside primarily in areas not covered by CGHS. Even otherwise, the health unit at Ernakulam does not serve their places as the distance is more than 2.5 kms which is the jurisdictional radius of an authorised medical attendant as per Para 601 of the Indian Railway Medical Manual (IRMM for short). Further, in order to avail the service of the medical facility, a mere option by the pensioner would not be enough. As per the Railway Employees' Liberalised Health Scheme (RELHS for short), the retired employee would have to remit a minimum of 2 months pension in lumpsum. Though as per A-1 circular, orders in respect of fixed medical claim for members of the Armed Forces, All India Services and Railway Pensioners/Family pensioners were to be issued by the respective administrative authorities, no authority could abridge or restrict the benefit vis-a-vis other Central Government pensioners. In fact, administrative authorities of the Armed Forces have given a chance to the pensioners to opt for medical allowance or to avail medical facility at the Defence hospitals. By giving effect to the illegal A-3 order, medical allowance already granted is being unjustly recovered from the applicants 1 to 3 while no allowance has so far been given to applicants 4 &5. The applicants rely on the Supreme Court's decision in D.S.Nakara and others Vs Union of India, AIR 1983 130 for the proposition that a micro classification of pensioners for purposes of revised pensionary benefit would be

2.

unjustified as pensioners form a class as such. It is vehemently contended that the unconstitutional part of a provision can be severed from the otherwise constitutional provision by reading down the provision.

3. The respondents 1 to 3 have opposed the application in their reply statements wherein it has been contended that Railway pensioners are paid pension and other benefits by the Railway Administration. Pensioners residing in areas covered by CGHS or corresponding health services administered by other Ministries/Departments alone are eligible for Medical allowance. Railway Hospitals/Dispensaires/Health Units, being the corresponding medical facilities managed and provided by the Railway, pensioners residing outside the areas where such medical facility is located alone are entitled to fixed medical allowance and those residing within those areas would not be eligible for such medical allowance. A-3 order issued in pursuance of A-1 and A-2 with the President's sanction is free from any arbitrariness or discrimination. Para 601 of IRMM is not relevant for deciding the admissibility of medical allowance as it is intended for day to day medical expenses not involving hospitalisation. Defence pensioners and Railway pensioners are not comparable in the matter of medical facility as the former are served by very few defence hospitals while Railway medical facility is well distributed. Even pensioners who are not members of the retired RELHS are eligible for medical allowance if they reside outside the areas covered by Railway hospitals/Health Clinics. The facilities available under RELHS - 97 are not comparable to

those provided under CGHS as the former provides a large number of medical service and assistance. A-3 order having been issued in pursuance of A-1 and with Presidential sanction, there is no illegality or inequity about it.

4. Respondent 5, the Senior Post Master, Cochin, has opposed the O.A. on the ground that there was no grievance or hardship caused by any act of commission or omission on the part of the 5th respondent and hence no claim is enforceable against it.

5. We have heard Shri V.R.Ramachandran Nair, learned counsel for the applicants and Smt.Sumathi Dandapani for respondents 1 to 3 and 6 to 8. Respondent 4 being Canara Bank, the Pension paying bank is only an agency like respondent-5, the Postal Department.

6. Shri Ramachandran Nair, learned counsel for the applicants, has reiterated the facts and contentions in the O.A. and the rejoinder. Inviting our attention to A-1 and A-2 circulars and the option form, learned counsel would point out that the applicants are entitled to medical facilities under the Railway Health Scheme but are residing in areas where no such outdoor facilities are available. The impugned A-3 order unilaterally and without any authority declares that Railway pensioners like the applicants residing 6 to 12 KMs from Ernakulam Health Unit run by the Railways fall within Cochin Corporation and hence in effect takes away the applicants' legal right to claim medical allowance of

Y.

Rs.100/p.m. Referring to the rejoinder filed by the applicants, the learned counsel would contend that the Government of India, (DOP & PW)'s OM dated 17.4.2000(A-5) Central Government pensioners are entitled to medical allowance @ Rs.100/- p.m. if their places of residence are not served by CGHS or any corresponding Health services administered by other Ministries/Department even though the places of residence may fall within the limits of CGHScovered city subject to their furnishing an undertaking in the prescribed format and a certificate from the medical authority concerned in the prescribed manner.

7. Smt.Sumathi Dandapani, counsel representing respondents 1 to 3 and 6 to 8 would urge that the impugned order A-3 was issued in pursuance of A-1 O.M. dated 19.12.97 and that there was no denial of any right or just claim to the applicants as there is a Railway Health Unit at Ernakulam. The applicants reside within the Corporation limits of Cochin and they would therefore be not eligible for the medical allowance.

8. We have given our anxious consideration to the point at issue viz, the applicants' eligibility for fixed medical allowance of Rs.100/- p.m. in the light of A-1 O.M. and the legality of the impugned A-3 order: In our opinion, there is no justification in restricting the medical benefit to be granted to the Railway pensioners as compared to other Central Government pensioners. The Notification A-1 and A-2 do not contain any material to support any such restrictive

Q

provision. It cannot, however, be accepted that the Railway pensioners should be allowed medical allowance as admissible to the generality of Central Government pensioners without reference to the medical facility available under the Railway administration. Para 2 of A-1 O.M. dated 19.12.97 states as follows:

"These orders shall apply to Central Government pensioners/family pensioners, who at the time of retirement/death were governed by CCS(Pension) Rules, 1972 or other corresponding rules in operation prior to commencement of these rules and are eligible for medical facilities after retirement. Separate orders will be issued by the respective administrative authorities in respect of members of Armed Forces, All India Services and Railway Pensioners/Family Pensioners."

(Emphasis supplied)

Railway Administration, therefore, has the power and duty to issue separate orders. Such separate orders are occasioned by the chain of hospitals, clinics and dispensaries maintained at different places falling within the jurisdiction of each Railway Division. However, such modification should be in tune with the manner in which medical allowance is regulated. Therefore, care ought to have taken to ensure that the pensioners do not stand to lose and no undue hardship is caused to them. It is in this context that we have to examine

the impugned A-3 order. The applicants-pensioners are residing at places 6 to 12 KMs away from the nearest Railway medical facility viz, Dispensary at Ernakulam Junction. It is apparent that such pensioners are disadvantageously placed as compared to non-Railway Central Government pensioners. It is pertinent to note that the Armed Forces have evolved a scheme perfectly within A-1 and A-2 which allows its pensioners to opt for fixed medical allowance or availing treatment at those dispensaries/clinics. A similar system would be desirable under the Railway administration as well. It would be unfair to expect the Railway pensioners aged, 70 or 80 residing at Maradu, Fort Cochin or Mattacherry or Elamakkara within Cochin Corporation limits to come down to the medical facility at Ernakulam South Junction for treatment, if they feel it inconvenient. It would, therefore, be advisable to allow them an option on a one time basis, subject, of course to the administratively feasible conditions in tune with the provisions contained in A-1 O.M. dated 19.12.97. This desirably would enable them either to avail of the services of the medical facility at the specified centres nearest to their residence or be satisfied with the fixed medical allowance. For this purpose, it would be necessary to regulate the claim of fixed medical allowance more or less, in the pattern of what is provided by the Armed Forces with reference to the Government of India's A-1 O.M. Instead of restricting the admissibility of medical allowance to those Railway pensioners/family pensioners residing outside the City/Town/Municipality limits of places where a Railway hospital/Health Unit/Lock-up dispensary is situated, it would

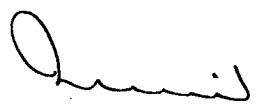
be necessary to restrict the claim to those who reside outside a radius of stipulated distance from the specified hospital/dispensary/health unit etc. We, therefore, consider it fair to set aside the impugned A-3 order which, according to us, has been issued without proper application of mind in so far as it adversely affects the applicants in this case, and direct the respondents to issue fresh orders taking into account factors like the network of CGHS dispensaries/hospitals/health unit, provided in the specified cities and the maximum distance beyond which the fixed monthly medical allowance is admissible. Distance should be fixed having regard to the fact that the retired employees are elderly people with reduced mobility. As has been observed already, jurisdiction of an authorised medical attendant, being a Railway Doctor, is taken to cover Railway employees residing within a radius of 2.5 KMs of the Railway. Since all the applicants in this case are residing beyond that distance, (i.e. 2.5 KMs) from the nearest Railway medical facility, we would consider it eminently reasonable to direct the respondents 1 to 3 to keep this aspect in mind while issuing fresh orders in pursuance of A-1 O.M. dated 19.12.97.

9. In the result, the impugned A-3 order dated 21.4.99 is set aside. Respondents 1 to 3 are directed to issue fresh orders in accordance with A-1 and A-2 office Memoranda within

a period of three months from the date of receipt of copy of this order.

10. The application is disposed of as above. No costs.

Dated, the 29th November, 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
~~VICE~~ CHAIRMAN

trs

ANNEXURES

Applicant's Annexures

1. A-1: True copy of the OM No.45/57/97-P&PW(C) dt.19.12.97 issued by the DOPT.
2. A-2: True copy of the OM No.45/57/97-P&PW(C) dt.24.8.98 issued by the DOPT.
3. A-3: True copy of the relevant portion of the Order No.S.No.PC-V/167 & PC-V/98/I/7/I/I(RBE No.65/99) dt.21.4.99.
4. A-4: True copy of the representation dt.14.2.2000 submitted by the Railway Pensioner's Assosication, Cochin.
5. A-5: True copy of OM No.38/99/99-P&PW(C) dt. 17.4.2000 issued by the Director, Govt. of India, Department of Pension & Pensioner's Welfare.